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Letter dated 12 July 2001 from the Secretary-General addressed to the President of the Security Council

Members of the Security Council will recall that, following the submission of the report of the Secretary-General on the establishment of a Special Court for Sierra Leone (S/2000/915) on 4 October 2000, letters were exchanged between the Council and the Secretary-General on 22 December 2000 (S/2000/1234), 12 January 2001 (S/2001/40) and 31 January 2001 (S/2001/95), which led to modifications in the text of both the draft Agreement with the Government of Sierra Leone and the draft statute of the Court. The Government of Sierra Leone was consulted on these changes and by letter of 9 February 2001 to the Legal Counsel expressed its willingness to accept the texts.

As agreed, however, between members of the Council and the Secretary-General, implementation of the revised Agreement would commence only after it could be ascertained that sufficient contributions were in hand to finance the establishment of the Court and 12 months of its operation, and pledges equal to the anticipated expenses of the following 24 months. At that time also, the Secretary-General and the Government of Sierra Leone would conclude the Agreement on the Establishment of the Special Court for Sierra Leone, thus establishing the legal framework for the commencement of the operation.

On 23 March 2001, I launched an appeal to all States to make contributions in funds, personnel and services to the Special Court for Sierra Leone. The estimated requirements for the establishment and first year of operation of the Court and for the following 24 months, based on the application of the United Nations Financial Regulations and Rules and the Staff Regulations and Rules, amounted to $30.2 million and $84.4 million, respectively, and a total of $114.6 million.

With the start of the appeal period of 60 days, a process of regular informal consultations between the Secretariat and a group of interested States was initiated by the Legal Counsel. The purpose of those consultations was to discuss the practical arrangements for the establishment and operation of the Special Court, in particular the establishment of a Management Committee, elements of the budget estimates, the level of posts and scale of salaries for international and local personnel, and premises for the Court. In the course of these meetings it became apparent that the financial parameters had been substantially reduced, and that the amount of contributions likely to be made available for the start-up phase and the first year of operation of the Court would range between $15 million and $18 million only.

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Concerned about the viability of a Special Court budgeted at a reduced level, I invited the 15 members of the Security Council to an informal meeting on 1 June 2001. Different views were expressed at that meeting on the need to downsize the operation of the Special Court commensurate with the amount of funds likely to be made available. Members of the Council reiterated their understanding that, without prejudice to the independence of the Prosecutor, the personal jurisdiction of the Special Court remains limited to the few who bear the greatest responsibility for the crimes committed. At my suggestion, it was agreed to continue the discussion on revising the concept of operation of the Special Court in a small working group consisting of interested States and a Secretariat team. On 14 June 2001, the Secretariat presented to the group of interested States revised budget estimates amounting approximately to $57 million for the first three years of operation of the Court, with $16.8 million for the first year.

The revised budget estimates reflect a scaled-down operation of the Special Court, while maintaining its nature and sui generis character, international standards of justice and the applicable law. A combination of factors including a different basis for calculation of salaries, a reduction in the normal rates of programme backstopping and contingency requirements, as well as a reliance on Sierra Leonean institutions and personnel, and on UNAMSIL administrative and security capacity, at least in the initial start-up phase, resulted in the reduction of the budget estimates.

On the basis of the revised budget, I renewed on 18 June 2001 the appeal for States to indicate by 29 June 2001 what contributions in funds, personnel, equipment and services they would be willing to make for the establishment and first 12 months of operation of the Special Court, and pledges for the following 24 months. In that appeal, I underlined the importance of appointing a Prosecutor, prosecutorial and investigative staff, a Registrar, and Judges for the Trial and the Appeals Chambers. Nominations or contributions of any or all such personnel were welcomed.

As at 6 July 2001, the Secretariat has received indications of contributions in funds for the first year of operation of the Special Court in the amount of $15 million — a shortfall of approximately $1.8 million — and pledges for the following 24 months in the amount of approximately $20.4 million — a shortfall of approximately $19.6 million for the second and third years. Very limited contributions of personnel have been offered. In addition, one State offered an in-kind contribution of furniture.

Considering that the amount of contributions obtained is sufficient to commence the establishment and operation of the Special Court according to the scaled-down concept of operation, I intend to circulate a letter to the countries which have made pledges for the first three years of operation of the Special Court, and request that they deposit their contributions for the first year into a Trust Fund within 30 days. When funds are available in the pledged amount in the Trust Fund, I will ask the Legal Counsel to conclude on behalf of the United Nations the Agreement on the Establishment of the Special Court with the Government of Sierra Leone. I also intend to dispatch a planning mission to Freetown to discuss with the Sierra Leonean authorities the practical implementation of the Agreement and the kind and scope of contributions expected in Sierra Leonean personnel and services, and to lay the ground work for the arrival of the advance elements of the Special Court, consisting of the nucleus of its administrative and prosecutorial staff.

In ascertaining the sufficiency of funds to commence the establishment and operation of the Special Court, I remain conscious of the difficulties inherent in securing funding on the basis of voluntary contributions. I therefore reserve the right to revert to the Council at any time in the course of the operation of the Special Court and ask it to reconsider alternate means of financing the Court. Once the Special Court is established, Member States have a responsibility to ensure that sufficient resources are available to secure the completion of proceedings against those indicted.

I would appreciate the concurrence of the Council with the proposed approach.

(*Signed*) Kofi A. **Annan**